UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

- x

In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

Adv. Case No. 19-08289-rdd

- x

PURDUE PHARMA L.P. et al.,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS et al.,

Defendant.

- x

Adv. Case No. 21-07005-rdd

- x

AVRIO HEALTH L.P. et al,

Plaintiffs,

v.

AIG SPECIALTY INSURANCE COMPANY,

Defendants.

- x

United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, NY 10601

May 20, 2021
10:04 AM

B E F O R E :
HON ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Status Conference Regarding Motion to Approve Disclosure Statement

HEARING re Interim Fee Application of Prime Clerk LLC, Administrative Advisor to the Debtors, for Compensation and Reimbursement of Expenses for the Period from February 1, 2020 through January 31, 2021 (ECF #2482)

HEARING re Motion to Approve Compromise Motion of United States Trustee Pursuant to Sections 105(a), 327, 328 and 330 of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure for Entry of an Order Approving (1) Settlement Agreement with Skadden Arps Slate Meagher & Flom, LLP, Wilmer Cutler Pickering Hale and Dorr, LLP, and Dechert, LLP and (2) Certain Releases by the Debtors (ECF #2763)

HEARING re Motion to File Proof of Claim After Claims Bar Date filed by Kyle M. Parks (ECF #2057).

HEARING re Motion to Allow Claims /Motion Tolling Filing Deadline (Claim submitted but not filed - pending disposition of the motion) filed by Arlandis C. Issac (ECF #2069) .

HEARING re Motion to Allow Claims / Motion for Tolling Filing Deadline (Claim submitted but not filed - pending disposition of the motion) filed by Andre S. Youngblood (ECF # 2071) .

HEARING re Motion to File Proof of Claim After Claims Bar Date /Motion to Request Extension for Filling Proof of Claim (Claim was not included with the motion) filed by Shane Christian Peterson (ECF #2086).

HEARING re Motion to Allow Claims /Motion for Tolling Filing Deadline (Claim submitted but not filed - pending disposition of the motion) filed by Neal W. King (ECF #2088).

HEARING re Motion to File Proof of Claim After Claims Bar Date filed by Troy A. Pesina (ECF #2193)

HEARING re Letter to Judge Drain regarding the 4/21/21 hearing Filed by Troy A. Pesina (ECF #2597)

HEARING re Motion to File Proof of Claim After Claims Bar Date (Claim submitted but not filed - pending disposition of the motion) filed by Lisa M. Acquaviva (ECF #2211)

HEARING re Motion to File Proof of Claim After Claims Bar Date filed by Brian Lee Danner. (ECF #2458)

HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al v. Commonwealth of Massachusetts et al Motion to Extend Time / Motion to Extend the Preliminary Injunction

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Notice of Hearing on Plaintiffs Motion for Entry of an Order (I) Authorizing Plaintiffs to Redact and File Under Seal Certain Confidential Information and (II) Granting Related Relief (related document(s)129)

HEARING re Adversary proceeding: 21-07005-rdd Avrio Health L.P. et al v. AIG Specialty Insurance Company (f/k/a American In Motion to File Under Seal Motion to Seal Documents Submitted in Connection with Plaintiffs Consolidated Memorandum of Law in Opposition to Defendants Motions to Dismiss for Lack of Personal Jurisdiction (related document(s)88, 84, 90, 77, 82, 80, 73)

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain. We're here in In re Purdue Pharma L.P., et al.

These matters today are being heard completely telephonically. That means that in addition to introducing yourself and your client the first time that you speak, you should state your name if you speak later so that the court reporter and I can put together your voice with your name.

There's one authorized recording of these hearings. It's taken by Court Solutions, which provides a copy on a daily basis to our clerk's office. If you want a transcript, you should contact the clerk's office to arrange for the production of one.

Because these hearings are completely telephonic, you need to keep your phone on mute, unless of course, you're speaking, at which point you need to unmute yourself.

So with that introduction, I have the agenda for the hearing and I'm happy to go down it in the order of the agenda.

MR. HUEBNER: Terrific. Good morning, Your Honor. For the record, this is Marshall Huebner of Davis Polk & Wardwell LLP on behalf of the Debtors. Let me first ask whether I can be heard clearly.

THE COURT: Yes, you can be heard fine.

MR. HUEBNER: Terrific. Thank you, Your Honor.

So going down the agenda, that is exactly what we had in mind, so if it's okay with the Court, I will begin with the sort of status update on the disclosure statement.

THE COURT: Okay.

MR. HUEBNER: So Your Honor, as I told the Court on May 12th, I thought that it was highly likely that we would be able to proceed with the disclosure statement in the coming days.

And that's because as I sat there on May 12th, I actually saw, along with an extraordinarily devoted and hard-working Davis Polk team and many other firms for many other parties, saw a path to resolution on the issues that remained. And, you know, whether we were on the X yard line or the Y yard line, I'm not sure that always works perfectly, but we certainly appeared pretty close with the number of issues dwindling.

The first or five days since the May 12th hearing where Your Honor graciously gave us extra dates went extremely well, and I will soon give a fly by update. Some pretty important things that were not resolved on May 12th that are now very close to resolution, in some cases at resolution, and in some cases, you know, sort of, like, hopefully a few (indiscernible) units away from being ready to move to documentation.

But candidly, the last two to three days have been

much more difficult with respective issues that remain, and it is not currently clear to me whether we have a path to being done by May 26th with a disclosure statement that actually is ready for solicitation to creditors.

This would be just a terrible, terrible shame because losing May 26th, I think makes it extraordinarily likely, maybe even a virtual certainty, that we could no longer hold the August confirmation schedule that so many people have been working, you know, 16/18/19 hours a day to try to keep to get as much money out as quick as we can for abatement.

But unfortunately, you know, the 7-yard line or the 5-yard line or the 2-yard line or even the 1-yard line is just not the same as being done, and then you have to have a plan and disclosure statement that is actually ready to send to creditors to vote on in order to ask a Court to approve a disclosure statement.

It is possible that because the delay would be so terribly costly and risky for so many parties that we will get there by May 26th. I certainly am not giving up hope and nobody is letting up on the gas pedal. It is also possible that, you know, some time may just be needed, especially in particular a couple of issues that are proving extremely intractable.

And, you know, several parties have expressed

views several times that this is a deal breaker and they're out and if we don't do it exactly this way, there's no deal and we should start preparing for the alternative, and obviously, you know, language like that makes it very difficult for us to continue to broker everybody sort of towards peace. And it's a case where there are strongly held views that many people, I guess, feel that they have bent as far as they can, and I think that not everyone weighs the risks and the costs of potentially delay and, frankly, what we have all built so far not going forward.

And, frankly, people seem to be -- or at least articulating -- that they weigh it very differently that I do and that the Debtors do, but, you know, everyone obviously has informed and sophisticated opinions and they'll carry them through as they see fit.

So there are two things that I think, you know, might prove necessary. Number one is just time, you know, these are hard issues. These are among the most complex cases ever filed, certainly with the most creditors and the most claims ever in world history, and it is not simple, and it has political overtones and public health overtones and everything that the Court knows well; I won't belabor it. And it may just be that a little bit of a, kind of you know, a relaxation of the relentless pressure that the deal has been under on issues large and small may actually be

necessary to get people into the mode that will get us over the goal line.

The second issue that may actually help turn sort of some magic keys and some tumblers is something I was happy to report is entirely and unsurprisingly entirely positive, which is the incipient mediation commenced by Judge Chapman. The time, effort, and intensity that she has already brought to bear is remarkable, let alone for a sitting S.D.N.Y. bankruptcy judge with a very full docket and a full load.

And obviously, if that progresses, which we all very much hope it will, and progresses hopefully well in advance of June 30, that may also provide additional dimensionality that makes it possible to resolve issues that as of now it is not obvious that we will be able to resolve in the next very small number of days.

As the Court and others are well aware, our reply brief is due Monday, it is already Thursday, and the 26th is just coming very quickly. And, you know, we were, as I said, for several days on the trajectory that was extremely hopeful, but things have, in fact, you know, gotten a little bit more complicated in the last few days.

That say, let me turn to the positive because there is a lot of positive, and many of the issues that actually were not done on May 12th I think are in a much

better place. I'm going to choose my words extremely carefully on each of these issues. I hope I choose them carefully enough. The number of emails we've got from different parties saying you can only say it exactly this way or only use these exact words or don't say anything more than this was a pretty, frankly, vertiginous number of directives and tic-tocks.

And so, I think we're going to err on the side of conservativism on each of the issues and hopefully will not describe progress greater than has been made, but the progress is very material on the issues that by and large are intercreditor issues. There's nowhere else that the Debtor itself can flex or give. You know, we are really I think very much in mediation and mediator mode ourselves, you know, trying to resolve what is almost exclusively a complex conundrum on intercreditor issues.

So let me go through some of those because I do want to give a lot of sort of optimism for the things that have been accomplished while being realistic and sober about the things that still lie ahead.

Issue number one is the structure and, you know, post-emergent structures for the sort of what I'll just call the public/private split. As the Court surely remembers, you know, the overwhelming majority or substantial majority of the estate assets are going to non-federal governmental

actors to be used exclusively for abatement. There is, you know, $1.4 or $1.5 -- it depends how you count it and who you count -- billion dollars going to the private mostly for abatement, other than the PIs. Obviously, this is a multiyear payout situation as to many of the private groups. It is obviously also a multiyear pay-in situation from the Sacklers.

And so, working -- and with this, I do give a nod to the UCC that has been sort of the group negotiator largely for the private side, which has made everybody's bias I think much more efficient, you know, opposite primarily the ad hoc committee with us as mediating with respect to, you know, the master disbursement trust structure, you know, ensuring that the payment close work correctly, that there are reserve sets, that contingencies and eventualities are addressed. You know, what happens if Newco sells assets; what happens if there are prepayments from the shareholders. You know, it's a very complicated deal that goes on for many years with many what if this happens and what if that happens.

And I think we have made tremendous, tremendous progress addressing pretty much every contingency and possibility that almost any of the many creative people on the deal could think of and there's sort of the home and sort of a coin sorter for almost all of them, which is

great.

Number two is the trust distribution procedures, also very complicated as the Court knows well. We have over 600,000 filed claims, which is multiples of the next biggest case in terms of number of claims ever filed, and there are essentially going to be sub-trusts created for each of the private side deals and there needs to be trust distribution procedures or TDPs that relate to how that money gets, you know, whacked up and how, you know, claims get validated and what are the authorized abatement uses and things like that.

And a lot of those have been hitting the docket as fast as we can get them final enough to file, and there's still a few final open issues being put to bed and those will continue to be filed and that, I think, is definitely a clear pathway to finality on.

You know, while many of the issues are largely internal to creditors, obviously issues also face the Sacklers. Those negotiations and documentations and emails, you know, are almost literally in the 20 to 21 hour a day range right now with, you know, documents coming back and forth from all sides. There are issues left, to be sure. We are not done with that deal yet, but we are getting a lot closer, and we are getting closer by the day. And while I can't promise that we're going to get there, it certainly feels like everyone is in deal-making mode, and that

continues the pace and there are already calls set up and already meetings tonight.

Number four is the federal government, which has had a great number of issues still open in the case, and I think on this one, it's fair to say that the progress has just been simply tremendous. You know, ironically, although the federal government is the single largest obviously government in our country, the commercial approach and frankly, the speed with which they have been able to react to things and their public mindedness continues to be quite notable.

As Your Honor may remember from the DOJ deal, one very large open item was exactly what the plan treatment and recovery was, what's going to be on the $6.544 billion dollars of claims, the non-forfeiture claims that the DOJ has against the Debtors. That is now basically agreed with the relevant creditors. It's still moving along through the machinery of governmental approval, so I don't want to overuse words like agreement in principle, so I want to make sure I get that one right, but let's just say that that one is, you know, not on my top X list of worries.

There are other areas where the federal government is also implicated, you know, for example, with respect to personal injury claimants. As I have now learned during this case, very often when personal injury claimants get

recoveries with respect to torts, the federal and maybe other governments as well have something to say about that because it may be that a bunch of the medical or other costs that were incurred were actually already repaid by Medicare or Medicaid or the VA or other federal programs; there's a Medicare secondary payer statute.

And so, you know, what exactly the federal government position is vis-à-vis several of the private claimant categories in this case, including both the personal injury claimants and the TPP since, you know, certainly in the federal government's view, they themselves are a large TPP, third-party payor, maybe the largest and sort of what their role is within that class also could have been something that derailed, frankly, the plan. But I have a fair amount of optimism and, frankly, more than that that all the issues that relate to faith in the federal government are moving along and are where they need to be.

Your Honor certainly knows that the NAS group -- not the medical monitoring side, which was part of the phase one term sheet, but the sort of NAS as personal injury claimants -- filed a quite thoughtful and detailed objection to the disclosure statement. The primary issue there is essentially the division of recoveries between -- again, I'm overgeneralizing, but adult tort victims in the PI class and NAS victims in the PI class, and we are optimistic that that

actually is not far from an agreed resolution.

I think parties are working very hard on that and it's really an issue that is between the NAS PIs and the non-NAS PIs, and I think that people are very focused on it. I could be wrong, but if my memory is right, Ken Feinberg has actually also been assisting with that in a sort of post -- end of mediation encore to try to help bring that home.

Co-defendant claims issues are also things that, you know, it's not really a disclosure issue per se, but lots of calls are happening and lots of people are being thoughtful about that and, you know, that obviously is something that is also moving along.

You know, there is an issue with respect to -- you know what? I'm actually going to leave it at that, because what I don't want to do is actually step into something that is controversial. And frankly, to be very straight about it, I don't really want to sort of maybe inadvertently trigger a maelstrom. And some of the issues that remain are very complicated, and I'm a little bit concerned that by even naming them, frankly, you know, it would not be a positive step for the case.

And as I said, we're not giving up hope that the 26th is possible, but we're also being sober and realistic. You know, obviously, a true asymptote always approaches zero but never quite gets there. This case is not going to be a

true asymptote, we are going to get there, but I'm not comfortable making any promises to the Court as to sort of exactly on what day I think that's currently the most likely.

With respect to the disclosure statement itself, Your Honor, there, I'd like to report it's hopefully positive, you know. As I hope the Court knows by now that we worked very hard to accommodate every objection we possibly can with something that we believe is reasonable, as opposed to just saying sort of we'll see you in court; it's just not our way.

And so, the disclosure statement gets longer and longer every time we file it, but also in some ways, sort of shorter, you know, executive summaries and, you know, the U.S. Trustee asked us for much more sort of plain English and chart form and things that make it more accessible given the nature of many of the claimants.

And I think that we actually -- when you put aside -- and again, I apologize to anyone on the other side about this, I'll be very brief and light. But if you put aside the disclosure statement objections that we believe are confirmation objections because they basically think the disclosure statement should not be approved because it is flatly illegal for the following reasons. You know, the actual, what I'll call disclosure statements, we actually

think are getting quite dramatically narrowed as we work hard to listen and hear what peoples' real concerns are and they had disclosure either directly or through crosslinks to their own documents where we believe it's appropriate, you know.

And obviously the Court knows how much information has been provided in this case in general and has expressed views on that, so I won't belabor the point. There clearly are going to be objections that are unresolved at the disclosure statement hearing. You know, I think principally been non-consenting states have several objections that are not going away at the time of the disclosure statement. I hope that they will go away if there's a mediated outcome under Judge Chapman sort of guidance and tutelage.

The ad hoc committee on accountability, you know, remains obviously in a decidedly different place, but it's five individuals or members of that committee that do have a different view about what's best, which we'll talk about in a few minutes on the PI, which frankly, I don't think anyone else in the entire case shares.

And for now, at least the public schools, which are sort of the subdivision of the non-federal governmental claimants, we just don't -- we're not going to have a solution for at the time of the disclosure statement. I think that, you know, it is an issue that is largely an

inter non-federal governmental issue that we know that the ad hocs are focused on and we hope that someday we'll get topped out there that people can live with that will work for them, but I don't think that's likely to be done by then.

So that is all I had to say, the sort of disclosure statement status, as I said there. There is a lot of progress and it shouldn't be masked, but there still some great complexities ahead and May 26th is coming very quickly and so, I just don't know yet. And I would never obviously say anything to a court or really to anyone actually ever in any context that I did not believe is true. And so, that is where we are.

So I don't know if anyone else feels the need to be heard with respect to the disclosure statement status conference. It was really the (indiscernible) most update for the Debtors. But obviously, if someone feels that I misspoke or just adding their voice for the Court or the public's knowledge is important. Obviously, I'm just the Debtors' lawyer; I have nothing to say about that, other than to say that from the Debtors' perspective, we are otherwise ready to move on to the rest of the agenda.

THE COURT: Okay, thanks for the update. You noted -- and I don't have a problem with this -- that you didn't want to get into the details of the open issues, so

I'll limit my remarks to this.

First, if there truly is an intractable issue that the Debtors will just have to make a choice on and you really believe that that may remain intractable, reasonably speaking, for now at least, regardless of whether you proceed or not and a change to resolve it wouldn't require re-solicitation or materially re-solicitation, then I think the Debtors just have to make a choice and set a deadline for people to make their choice on it.

On the other hand, if delay is caused simply by documenting a complicated agreement reached in principle, I certainly fully understand another short delay of the disclosure statement hearing. But, you know, as the lawyers on the phone know well, Chapter 11 cases move in stages and there are plenty of times when issues remain open up to approaching the confirmation hearing itself.

And I don't think we could just have multiple adjournments in the hopes that people who may be waiting for that type of deadline to make up their minds before then, but I'm speaking in very general terms. The Debtors have quite a bit of discretion as to when they want to move forward or not and when they need to make a choice one way or another as to what plan they're going to put out and ask to be voted on.

MR. HUEBNER: Your Honor, we appreciate that. You

know, I think thus far, you know, we have completely resisted, like absolutely resisted, you know, essentially calling the question in response to views of several parties that if we don't do exactly Y, they will walk, or if we do X, they will walk, and then we just go back to the drawing board and work even a little harder and try to be a little bit more creative and, you know, try to help where we can and sort of needle and cajole.

At some point, that bag of tricks will be empty, and we may have to make some hard choices and just say, look, this is the best we know how to do, and if you really mean it and you really want to vote against this plan and object to it and tear it all down and start from scratch, you know, we understand.

But we can't do better when we have, you know, two credit groups each saying, you know, one says if you do X, I'm out, and one says if you do not X, I'm out. You know, if we can't get one or both of them past that position, at some point, we have to make a choice and we will. We've been suffering, frankly, quite an extraordinarily number of slings and arrows and worse than that to sort of stay in our role as mediator and helper and facilitator, but we appreciate the guidance.

At some point if we have to, we will switch to a different approach because we won't have a choice because

there'll be nothing else to do other than say, you know what, the best thing we know how to do is X, and if you really truly want to make -- you know, try to block that from coming to fruition, that's certainly your right to do so. I very much hope it will not come to that.

And as I said, there are two great, you know, hopefully, keys left. One may just be a little bit of time, although it's going to come at a terrible, terrible cost in terms of delay and run rate. You know, sometimes parties just need to step back in order to be able to step forward again.

And the second is the mediation. Obviously, if a revised shareholder deal is cut, you know, that brings in a whole bunch of dissenting states and presumably, more value from the Sacklers; that may create an opportunity to solve problems in the way that we don't currently have tools for now. But we appreciate the guidance, and we'll continue to do our level best to stay both level and to stay at our best.

THE COURT: Okay.

MR. HUEBNER: So unless there are other comments from other parties, I would propose to begin to march through our happily very largely uncontested yet again agenda.

THE COURT: Okay, that's fine.

MR. HUEBNER: Mr. Robertson, that the Prime Clerk motion is yours and I trust you will turn the podium after that, I believe, to Mr. McClammy.

MR. ROBERTSON: Great. Thank you, Marshall. Good morning, Your Honor. Christopher Robertson, Davis Polk & Wardwell on behalf of the Debtors. Can I be heard clearly?

THE COURT: Yes, you can.

MR. ROBERTSON: Thank you, Your Honor. The first uncontested matter on the agenda is the agenda is the application of Prime Clerk LLC in its capacity as administrative advisor to the Debtors for reimbursement of fees for the period from February 1, 2020 through January 31, 2021. I'll be very brief.

Your Honor, this application was filed on March 15, but it was inadvertently not noticed for the April 21 omnibus hearing and was, therefore, not granted by the omnibus fee order that this Court entered on April 22nd. We therefore noticed this application for today's hearing. The fee examiner appointed in these cases has reviewed the application and has confirmed that he has no objection.

Your Honor, really on behalf of Prime Clerk, we would ask that Your Honor approve the application and would propose to submit a form of order following the hearing.

THE COURT: Okay. I will grant the application, which is for a modest amount, almost all of which is in

connection with preparing for a solicitation of a plan that involves a highly unusual number of parties whose votes would be solicited and complex ways to reach them.

So it's reasonable time, the rates are reasonable, and it's unopposed, so you can email the order with Schedule A and B to chambers granting the motion.

MR. ROBERTSON: Thank you, Your Honor. I will now turn the podium to I believe Marshall said Mr. McClammy. The next motion on the agenda is the U.S. Trustee's settlement motion, so Mr. Schwartzberg, forgive me if this goes to you.

MR. SCHWARTZBERG: Good morning, Your Honor. Paul Schwartzberg from the U.S. Trustee's Office.

THE COURT: Good morning.

MR. SCHWARTZBERG: On April 29th at ECF Docket No. 2763, the United States Trustee filed a settlement agreement to resolve a dispute regarding disclosure under Bankruptcy Rule 2014 with Skadden Arps Slate Meagher & Flom, Wilmer Hale, Pickering Hale and Dorr -- William Cutler, Pickering Hale and Dorr, and Dechert.

Specifically, in their applications, those applications, those firms did not disclose that prepetition that they had entered into a written joint defense and common interest agreement on behalf of the Debtors with other parties, including members of the Sackler families.

The United States Trustee informally raised this issue with the firms. The firms advised us that they do not consider the common interest agreement as a connection required under Rule 2014 to be disclosed. Obviously, the United States Trustee and the firms disagree on this issue. But after negotiations, we entered into the settlement as set forth on the docket.

Under the settlement agreement, the firms will supplement their retention applications to reflect any common interest or joint defense agreements they entered into on behalf of the Debtors with any party in interest. And in the aggregate, the firms will collectively reduce their pending or future fee applications or monthly fee statements by $1 million in the aggregate. And in exchange, the United States Trustee and the Debtors will release the firms from all claims relating to alleged disclosure failures concerning the common interest agreements.

There have been no objections to the settlement. However, we did receive an informal comment from counsel to the Raymond Sackler family, and counsel has requested that in the first full paragraph of the settlement agreement, we move the phrase, "its beneficial owners" and all the parties have agreed to that. And we've actually circulated an amended settlement agreement that we have executed that I would propose to hand up or email to chambers with the

proposed order so that those could be filed together and reflect the amendment to the settlement agreement.

Other than that, Your Honor, I have nothing to add unless Your Honor has any questions.

THE COURT: No, I don't have any questions. I have reviewed the settlement agreement, which recites the parties' respective positions, and it appears to me that the settlement that the U.S. Trustee has negotiated and that the Debtors are also a party to is a reasonable resolution of this dispute, at least given the recitations in the agreement.

Bankruptcy Rule 2014 requires more disclosure than the retention and compensation provisions of the Code provide for limiting compensation, which is reasonable for those who drafted the rule to have provided for so that professionals err on the side of more disclosure rather than less when they seek to be retained and at the time establish that they are not disinterested and/or don't hold or represent an adverse interest to the Debtors or to the estates.

The word connected or connections in Rule 2014 is at times difficult to apply to particular facts, and that reflects I think the way that courts have dealt with failures to disclosure under Rule 2014.

Here, the U.S. Trustee in its position recites

that it has not found evidence that the failure to disclose in this case was intentional or that there was an effort by any of the firms to mislead. In addition, of course, the firms state that they did not believe that they needed to make such disclosure under Rule 2014.

Given all of the facts here, again, just as reflected in the agreement itself, it appears to me that the resolution is a reasonable one, particularly given that it has been on notice for approval without objection by any party in interest who might have asserted that the connection that is now disclosed would be one that would be disabling under 327 or 330 of the Bankruptcy Code. And, of course, this motion is unopposed.

So in light of that, I will approve the settlement, which again, is reasonable and certainly within what I would exercise is my discretion here if this matter were to be litigated. See generally 9, Collier of Bankruptcy, Paragraph 2014.05 and the cases cited therein.

So, Mr. Schwartzberg, you can email the proposed order after having filed the slightly revised agreement, which I guess you should refer to in the order, just copying the three firms as well as the Debtors' counsel and that order will be entered.

MR. SCHWARTZBERG: Thank you very much, Your Honor.

THE COURT: Okay, thank you.

MR. HUEBNER: Your Honor, just 20 seconds from us. The Debtors were also asked to give up claims in connection with this. We are very comfortable that the Debtors don't have claims that are not being, at a minimum, fairly settled. You know, as the Court probably knows, you know, we had never even seen before a disclosure of signing a joint defense agreement or common interest agreement or even stipulation on behalf of a client as being a disclosable connection, and I actually believe that people went and looked at several dozen retention applications.

So just because the Debtor should never be giving up claims even against their own professionals, frankly, that they have not themselves formed a view about. I do want to give the Court comfort that we didn't obviously goes out, they just add our signature to someone else's stip. You know, the work was done to give us comfort that, in fact, the Debtors did not have and would not ever have asserted claims against these three firms, including among many other reasons, that the Debtors of course knew about these common interest agreements because they were executive on the Debtors' behalf.

So don't need to say more than that, but I did want to give the Court comfort as the second party releasing claims that we are, you know, extremely comfortable.

THE COURT: Okay. Very well, thank you. The next matter on the calendar is really several matters, each of which is a motion by a claimant, in each case, an individual, that is a person, for leave to file a late claim or have a claim filed after the bar date treated as being timely filed. It's items 4 through 11 -- let me just check -- yes, 4 through 11 of the agenda, the movants being Kyle Parks, Arlandis Issac, Andre Youngblood, Shane Christian Peterson, Neil King, Troy Pesina, Lisa Acquaviva, and Brian Danner.

These motions are unopposed. Moreover, the Debtors have filed a proposed order that would provide for the claims to be treated as timely. I'm not sure who from the Debtors are appearing on this, but I wanted to lay that out in case we have any of the movants on the phone, since it's my understanding that these motions are not opposed and, therefore, I don't need to hear oral argument on them.

But why don't I hear from the Debtors as to why they've proposed resolving these motions as set forth in their proposed order granting late claim motions.

MR. McCLAMMY: Thank you, Your Honor. Good morning. This is Jim McClammy of Davis Polk on behalf of the Debtors. First, we'd like to thank the Court for its accommodations in providing time for the parties to work through these issues while also addressing other major

issues in this case.

As Your Honor has noted, there are, at Docket Nos. 4 through 11, per se motions that have been filed to allow these late claims. And with the exception of Miss Acquaviva, who I believe I see in the virtual courtroom, all are incarcerated individuals. The incarcerated individuals have mainly pointed to shutdowns or quarantining as being the reason for their inability to file the late claims. Ms. Acquaviva has a declaration from a healthcare provider that also supports her request.

And in light of the limited number of late claim motions that have been filed to date, combined with the fact that the personal injury trust distribution procedures in their current state, which I believe can be found at Docket No. 2732, provide a mechanism for compensating personal injury claims filed before April 23rd of 2021.

And in light of the fact that this order preserves the ability of the trust to review the merits of these claims and is clear that the order applies only to these claims that have been filed as of this date. In light of both the limited number and the desire to kind of conserve the resources of the estate, the Debtors would propose that the order that was submitted at Docket No. 2865 be entered. We did consult with the Official Committee of Unsecured Creditors and the ad hoc group for the individual victims,

and they've consented to the relief requested here.

THE COURT: Okay. So just to summarize then, one point, the Debtors did perform due diligence on each of these motions and determined that there would be a reasonable argument by the movants, each movant that excusable neglect under Pioneer would apply and, therefore, it was not worth litigating the merits of the motions.

MR. McCLAMMY: That is correct, Your Honor.

THE COURT: All right. And given the filing of the proposed order and the fact that no one else has objected, as well as what you represented to me as far as the involvement of the creditors' committee and the PI group, I think this is a reasonable resolution of each of these motions.

I think you've made it clear, but I want to make it clear. If someone else hereafter files a late claim, they should clearly not assume that it will be treated in the same way, i.e., deemed timely, and that the relief that I would be granting with respect to these motions as per the order that was filed is limited to these motions and not to other claims that would be filed or might be filed in the future.

So I will grant each of the motions as set forth in the proposed order, that it was prepared by the Debtors and filed on the docket. Unless anyone has any problem with

the form of that proposed order, I'll use it as the basis for granting each of the motions.

MR. McCLAMMY: Thank you very much, Your Honor.

THE COURT: So you can email that order to chambers for entry.

MR. McCLAMMY: Thank you, we will do that. And I believe the next item on the agenda will be handled by Mr. Huebner.

THE COURT: Okay.

MR. HUEBNER: Okay. So, Your Honor, the next item is the extension of the preliminary injunction.

Look, as the Court and all parties now, instead of having sought a 60-day or a 90-day and having to do this only once, we actually feel very strongly that it's important to take this in the smaller available bites and only go essentially from hearing to hearing and not more than that.

And so, we're now here I think for the third or fourth time with the same largely sort of layout of parties. And so, I'm going to be extraordinarily brief because, you know, we just don't need to, I think, spend a lot of time and, frankly, of even money on this.

It is a very modest 27-day extension. The Judge -- that's you -- Your Honor strongly recommended that we go to mediation one last time with a brand-new judicial

mediator. At the request of multiple parties, including the dissenting states, as I talked about, we are already doing that. I think -- I don't know which of the brief extensions should be put easier than its forebearers, but given that we're now engaged in this mediation, I think it's particularly important.

I appreciate that the non-consenting states, you know, chose to again rest, you know, largely on their prior papers and file something only brief. I think we did the same thing, and so I'm not really going to engage in any oral argument with respect to the five individuals comprising the, quote, "ad hoc committee" on accountability. I do note, as we said in our papers, I only want to call one thing out and I will leave it at that, that people have been waiting too long and that's exactly the point. What they've been waiting for is resources and money and an end to the cost and burn of these cases and they availability of billions of dollars.

And as I have said at several hearings before, I think people who think about an end to the injunction, I'm just not sure that it's properly understood just what it would mean if everything we have been working on for two years now and everybody involved, including the federal government, half the states, the MDLPEC, the municipalities group, the UCC, all the private side groups, right.

If all of that falls apart and we're literally set back to sort of utter (indiscernible) and ground zero, the unthinkable horrific chaos of every creditor litigating against every other creditor, every creditor racing every other creditor to the courthouse to recover first from the Sacklers, the estate itself, you know, probably the holder of a very, very wide margin, the best claims against the Sacklers itself having to compete with, you know, 48 states and the federal government and others and thousands of private plaintiffs all also fighting one another, the delay, the cost of that, it's just almost impossible to contemplate.

And so, for the reasons that we've set forth in our papers, you know, we are getting ever closer. June is going to be another extremely important month. We're taking this injunction extension in the smallest possible bites we know how. We are very ready, make no mistake as I said at the last hearing and in our prior filings, to pivot to an extremely different approach with respect to the Sacklers if we are unable to reach a deal and this injunction will most assuredly not be continuing in its current form if things fall apart. And obviously, we're working with our stakeholders on that as well.

We hope it will never come to pass and we will get this over the goal line a new and ever more improved form.

But for that, we otherwise rest on our papers and believe that the injunction should be extended to the June hearing.

THE COURT: Okay. As you noted, the request is not opposed by most of the parties in interest in this case by a wide margin. There is a limited objection or a continuing objection and voluntary commitment by the ad hoc group of non-consent states, as well as a limited objection from the so-called ad hoc committee on accountability, both of which I've reviewed as well as the Debtors' reply.

I'm happy to hear briefly from their counsel.

MR. QUINN: Good morning, Your Honor. It's Michael Quinn of Eisenberg & Baum on behalf of the ad hoc committee on accountability. Can you hear me?

THE COURT: Yes, thanks.

MR. QUINN: Great. The sole point my clients want to convey today, Your Honor, is that the Sacklers should face a trial.

My clients believe that when people look back at this case, they will ask how it was possible that after so many people allege that the Sacklers caused a national crisis, the case got set aside. People will say that the key step in how the Sacklers avoided a trial was this preliminary injunction by the Court. This injunction is the magic trick in the Sacklers' strategy. It's been in place for 588 days today.

I listened to the Court at the last hearing address how it is important that the disclosure statement should explain the merits of the allegations against the Sacklers and explain why Purdue believes it's fair to extinguish all those claims.

Purdue did not file that explanation before the disclosure statement hearing that was scheduled in April. Purdue did not file that explanation before the disclosure statement that was scheduled for May 12th, and Purdue did not file that explanation before the disclosure statement that was scheduled for today.

I believe that a reason for these delays is because Purdue is trying to do the wrong thing. They are trying to force a settlement on a case that is better suited for a trial. That's all, Your Honor. Thank you.

THE COURT: Okay. Mr. Troop, do you have anything to say?

MR. TROOP: Just briefly, Your Honor. For the record, Andrew Troop from Pillsbury Winthrop Shaw Pittman on behalf of the non-consenting states.

I just want to perhaps clarify in case I heard Mr. Huebner incorrectly, something that he just said, which is to make it clear, as I know you know, Your Honor, that the phase one agreements, particularly with the private creditors and the inter-governmental non-federal commitment

to opioid abatement, is a process not only in which the non-consenting states participated, helped lead, and is generally, you know, a party to all of those resolutions. Somehow when he goes through that list, he seems to forget the effort and work that the non-consenting states have put into that.

Secondly, Your Honor, I just want to respond to one thing in the Debtors' reply. The Debtors seems to suggest that -- well, don't seem to suggest -- they suggest there's some dissidence between the non-consent states continuing their principled objection to this Court's issuance of a preliminary injunction limiting -- potentially limiting the rights of states to pursue their police power, regulatory or, frankly, any claims against the non-debtor Sacklers.

That is not at all inconsistent with the non-consenting states' commitment to work in this Chapter 11 case to see if there is a consensual resolution to be reached, and hence the voluntary commitment and hence the commitment I made to you on October 11th, I believe it was, 2019 that the non-consenting states notwithstanding being non-consenting would be full and active participants in this Chapter 11 case.

I know everyone knows that, Your Honor. The fact that the Debtors try to paint it different is slightly

irksome, but nothing more than that. It's not changing our attitude on anything. And with that, we otherwise rest on our papers. Thank you, Your Honor.

THE COURT: Okay, thank you.

MR. HUEBNER: Your Honor, just 30 seconds if I may, and then I think we're probably (sound glitch) today, at least from the Debtors' perspective.

With respect to Mr. Quinn, Your Honor, it is just so both offensive and factually wrong, frankly almost outrageous, to call the injunction the Sacklers' magic trick. The injunction was requested by the Debtors with the support of the Official Committee of Unsecured Creditors representing all unsecured creditors and the support of the AHC representing the MDL plaintiffs' executive committee who are the ones, along with the states, who have been suing the Sacklers for years, and the consenting states, which are about half the states in the country.

It is there because almost every creditor in this case believes it in their and the estate's best interest. To attempt repeatedly to cast this as something the Sacklers have hoodwinked us all into is totally offensive, so let me be very clear: they are the defendants, we are the plaintiffs. We have an injunction in place because we think it will get us to the best place for our stakeholders.

And if they avoid a trial, it will not be because

of this injunction; that is why it is a temporary injunction. If they avoid trial, it is because they are paying billions and billions of dollars that the overwhelming majority of creditors in this case believe are the right outcome or the best available outcome and that will pass the many strictures and requirements of 1129 to be confirmed by this Court; that's how the bankruptcy system works.

With respect to Mr. Troop, I fear that seethings by the irksome may have just been a result of either mishearing or me misspeaking; and if it is, I'm always happy to apologize when I see the transcript. I don't believe I said anything about the parties who worked on phase one mediation. Mr. Troop is absolutely right. I think whenever that has come up, I think -- I hope I've been very clear. The non-consenting states were incredibly important and positive participants on those.

In fact, Mr. Troop's emails themselves recently served as a vehicle to get us over the goal line on a very thorn issue when other people did not remember what had been done and Mr. Troop actually did and found the emails to prove it on an intercreditor issue. So to the extent that somehow I discussed phase one and left them off as an important contributor, I'm delighted to apologize. I don't think I did, but if I did, I certainly try very hard, I

think, not to be irksome to anybody.

I'll leave aside the dismiss point. We have a difference of opinion obviously as to whether lifting the injunction today and having thousands of lawsuits proceed against the Sacklers would be a good thing or a bad thing. People are allowed to have a difference of opinion on that; that's okay. I think we'll go back to resting on our papers and certainly approach the rest of May and June, I think all of us, with the same desire to get to the best possible outcome for our clients and for the estate.

THE COURT: Okay. All right. I have before me the Debtors' motion for the continuation of the preliminary injunction that has been in effect in this case since the state of the case through the next omnibus hearing date, which is less than a month away, June 16th.

The standard for evaluating such a request is well established and, in fact, law of the case as set out in In re. Purdue Pharma LP, 619 B.R. 38, 58 through 59, (S.D.N.Y. 2020) and the cases cited in that opinion and in my two earlier bench rulings granting the injunction.

The standard, which is not addressed by the ad hoc committee's objection at all, is the basic well recognized preliminary injunction standard with one focus on the bankruptcy context, which is that when one focuses on the prong of both irreparable harm and success on the merits,

i.e., likelihood of success on the merits, one focuses on the ultimate goal of a Chapter 11 case, which is whether they will be a successful reorganization and whether the proposed injunction would make it substantially more likely that that reorganization occur or, phrased differently, if the injunction is not granted whether the chances of a successful reorganization are substantially jeopardized.

Here, as Mr. Huebner stated, the Debtors themselves, the Debtors' estates have asserted substantial claims against many, if not all, of the covered parties, that is the third parties covered by the injunction. Litigation on those claims arguably is covered by the automatic stay even as to governmental entities, certainly it would be as to the individuals in the other objector or the ad hoc committee on accountability.

But given issues with respect to interpreting 362(b)(4) as it applies to governmental entities and the prospect of multiple and perhaps thousands of litigations, which either intentionally or inadvertently would assert estate claims as actually having been claims of the third-party plaintiffs, an injunction is warranted to make it crystal clear that claims that the Debtors' estate would have, such as for fraudulent transfers or veil piercing or the like, are in fact enjoined against the covered parties.

In addition, the Debtors have also pointed out

that there are hundreds, in fact thousands, of litigations pending around the country by third-party plaintiffs against various covered parties, including in the MDL and as asserted by various governmental entities.

The parties to the MDL and most of those governmental entity plaintiffs support the injunction so that they can hopefully resolve, on a collective basis that is fair and efficient and reasonable, those claims so that the funds can be put to the best use. That's entirely consistent with the Bankruptcy Code and the case law supporting preliminary injunctions in this context.

Bankruptcy is all about the commons, particularly where there are, as here, hundreds of thousands of claims and, in fact, claims on behalf of the federal government and all of the states, except for the two that were settled prepetition. There's a fundamental bankruptcy policy, which is also, frankly, common sense that where there are such a multitude of claims, they should be dealt with not by having races to the courthouse and to judgment and enforcement, but rather, in a way that maximizes the recovery and the best use of the recovery for everyone.

I will note that what is being enjoined here are all civil claims, claims money. We're talking about money, not crimes. Mr. Quinn and his committee, and it continues again in this pleading, seems to conflate the two. He

spends most of his pleading talking about a criminal case against a doctor in Queens as if I were enjoining criminal prosecutions; that is simply not true. And frankly, to suggest otherwise is either a lie or just plain dumb.

So we are talking about money, which is a fundamental right that parties have to negotiate over, and the vast multitude of parties in interest in this case recognize that and believe that it is more likely than not that a successful reorganization will be achieved here in this case with a collective solution that involves not only the Debtors' estates' claims for money, but also third-parties claims for money against the covered parties, namely the Sackler families and those related to them.

There is a, I believe, legitimate dispute between the non-consenting states and the other parties in interest in this case who, contrary to the non-consenting states, either affirmatively support or do not object to the extension of the injunction; namely, whether the prospect of reaching a confirmable plan of reorganization here that includes an appropriate contribution by the covered parties are furthered or harmed by the continuation of litigation and the commencement of litigation against those parties while the plan is being negotiated.

One could take the view, as the non-consenting states have, that that type of litigation would not impair

the parties' ability to negotiate a plan. But I think the better view is and I so find that, in fact, when one is focusing on thousands of lawsuits in multiple jurisdictions that could have different results given the different laws involved and the different parties involved and the true complexity of the negotiations that would be taking place at the same time, the better view by far is that those lawsuits should be preliminary enjoined to see if a plan can be reached that is confirmable.

Certainly, the prospects for such a plan are better today than they were at the commencement of this case. We have had I think an unprecedented amount of disclosure, I believe far more than the disclosure that would occur in any individual lawsuit, that has led to a substantial consensus by parties in interest in this case in support of a plan and even consensus by the so-called non-consenting states on material elements of such a plan.

Moreover, we have ongoing negotiations as to the claims that a plan, if proposed, would resolve with the consent of the presently non-consenting states, as I've directed and as is being conducted now by my colleague, Bankruptcy Judge Chapman.

So it appears to me that the timing here supports clearly continuation of the injunction to let those efforts continue and, hopefully to reach some level of agreement.

If that has not happened at the end of the day, we'll have to see whether a final injunction in a plan is warranted or not. That process is simply not a process that's done in the dark or by snapping one's finger. The Court needs a clear evidentiary record.

Believe it or not, Mr. Quinn, that is called a trial under the bankruptcy rules with an opportunity to be heard, to argue, to present witnesses, and to take discovery. And again, there has been substantial, enormous discovery in this case already that has informed the parties' judgments here as to how the case should go.

And a bankruptcy case itself is a global trial; that's why it's called a case with a docket, with rulings. And then within it, there are contested matters, including a confirmation hearing that are governed by the Part 7 rules incorporated in Bankruptcy Rule 9014, which in essence track the Federal Rules of Civil Procedure and any other Rules of Federal Civil Procedure that the Court further incorporates.

So I will overrule both of the objections. I appreciate the restrained nature of the ad hoc committees of non-consenting states objection and also their continued willingness to participate constructively in consensual solutions in this case, or at least trying to achieve consensual solutions in this case and trust they will continue to do so. After all, they are public servants who

represent the people in their respective states.

They, along with the other parties in interest in this case, have already, as I hope I tried to establish on the very first day of this case I believe is the right approach, accept it that the money here should be used for abatement primarily since abatement not only helps their state's citizens as a whole, but also those who have been individually injured by opioids.

And I hope that that principle, if an appropriate amount of money is negotiated, will control here. But we don't know yet; that's why this is a preliminary injunction, not a final injunction. But we will see whether that leads to a plan that would lead to a final result or not that maximizes the use of this money and does not -- I repeat does not, since I don't have the power to do so -- resolve any criminal liability, if there is any. It's just not a topic that has come before me and never will.

So Mr. Huebner, your firm can email the order extending the injunction, which I'm sure will track the last order, except with the different dates of course and perhaps additional matters added to the list of proceedings, and it'll be in it. In the meantime, the injunction will remain in effect pending entry of the order.

MR. HUEBNER: Thank you, Your Honor. And just to give Mr. Quinn comfort or, frankly, to put to bed I guess an

aspersion that was cast to be a little bit more precise. The reason we have not yet filed the quite-detailed explanation of the factors considered by the special committee is actually entirely appropriate in our role as plaintiff, which is we don't have a deal yet. And to explain publicly, you know, a sort of flyby of strengths, weaknesses, considerations, issues, and factors for the world and the plaintiffs to see and the defense to see in its final form, we don't have a deal yet; it's not in the estate's best interest.

And to give credit where credit is due, my memory could be wrong, but I actually believe we were going to file it. It might have been Mr. Price, who I don't think anybody can accuse of being sort of, you know, a magician helping the Sacklers with magic tricks who said to me the (sound glitch) in a nice way of, are you out of your mind; you don't put this out in the public until the deal is done.

So there also, maybe it was not intended to sort of be, you know, an aspersion. But to be clear, in our role as plaintiff with a defendant with whom we have not yet settled, who we have not yet put out for the world to see our explanation of how and why we compromised and what we considered and not filing, that was with everybody's full support.

Your Honor, there is one housekeeping matter that

I need to turn over to Mr. Kaminetzky and the procedure orders that we entered -- that the Court entered that we've handed up and that the Court entered that there's a date technicality that needs to be addressed in light of the fact the disclosure statement order is not being entered today. And so, if I could ask for the Court's indulgence one more very quick matter, I would ask Mr. Kaminetzky to explain what we need.

THE COURT: That's fine. And what you're referring to, of course, is that the scheduling order leading up to a confirmation hearing recognized that the dates might shift if the disclosure statement is not approved as of a certain date.

MR. KAMINETZKY: Good morning, Your Honor. This is Benjamin Kaminetzky at Davis Polk, counsel for the Debtors. You're precisely right. The schedule that -- or the order that Your Honor entered last week at Docket No. 2868 says that the order will terminate and cease to have any affect if and only if the disclosure statement order is not approved at the disclosure statement hearing on May 20th, 2021, and that's at paragraph 8 of the order.

So we respectfully request, Your Honor, in light of today's developments, that paragraph 8 is amended to say if not approved by May 26th or such other date set by the Court; this way, you know, the order will remain in effect.

And we are happy to report, Your Honor, that the document reserve that we described in detail at the last hearing was opened on Saturday morning and parties that have already signed the protective order received an email with their login credentials at the same time. So the process contemplated by the order that Your Honor entered is already up and running, and so, we just ask for this minor amendment to the order to change the May 20th to May 26th and add the language, "or such other date set by the Court" so we don't have to come back to Your Honor on this issue.

THE COURT: Well, I'm fine with the 26th being in there and the other language, but I want to make it clear, I think this is consistent with the way the order is order; that is if it's moved substantially off of the 26th, as Mr. Huebner suggested it might be, we'll have to change other dates too.

MR. KAMINETZKY: Yes, Your Honor, that's obviously the case. I mean, as Mr. Huebner said, you know, if we're much past the 26th, we might have to go back to the drawing board with respect to, you know, kind of much larger issues. But if we can make this change for the time being, I think that would be helpful, especially considering that in a sense we've already started to comply with the order.

THE COURT: Okay, that's fine, so you can email that to chambers.

MR. KAMINETZKY: Thank you, Your Honor.

THE COURT: Okay. And I think the last matter on the agenda is in the adversary proceeding, I'll just refer to as the insurance adversary proceeding, Purdue Pharma v. AIG Specialty Insurance, et al. And it's plaintiffs' motion for entry of an order under Section 107(b) of the Bankruptcy Code, sealing certain exhibits or portions of exhibits that they would like to have sealed in connection with their response to certain of the insurer defendants' motions to dismiss for lack of personal jurisdiction.

MR. LEVERIDGE: Your Honor, this is Richard Leveridge.

THE COURT: Great. I was going to say I don't know who from the plaintiff side is going to handle this, but you should go ahead at this point.

MR. LEVERIDGE: Thank you, Your Honor. This is Richard Leveridge from Gilbert LLP. Can you hear me?

THE COURT: Yes, thanks.

MR. LEVERIDGE: Okay, wonderful. My firm and I represent the ad hoc committee of governmental and other contingent litigation claimants, but I am going to be speaking on behalf of all the plaintiffs in the adversary, which include the Debtors and the Official Committee of Unsecured Creditors.

This, as the Court knows, is an insurance coverage

adversary proceeding. The three groups that I've mentioned are coordinating and serving as co-plaintiffs in that action against many insurers. There are 11 insurers who filed motions to dismiss for lack of personal jurisdiction. The briefing schedule set by the Court called for their briefs to be filed on April 5th, our opposition on May 3rd, and then they have replies to today.

In connection with our opposition and in the initial pretrial conference that the Court held with the parties on March 24th, there was a discussion of the potential need for jurisdictional discovery. After the briefs were filed in support of the motions, we engaged counsel for the insurers to discuss jurisdictional discovery that we thought was appropriate for purposes of responding to their motions. That process, as is described in my law partner's Jason Rubenstein's declaration, which is Docket No. 131, involved quite a bit of back and forth.

The discovery was narrowed in order to allow the insurers to respond before our briefs were due on May 3rd. It was also conditioned by them on the entry of a confidentiality agreement, which is Exhibit E to Mr. Rubenstein's declaration. In connection with that confidentiality agreement, our use of material that was provided in the jurisdictional discovery was limited for the purpose of responding to the motions to dismiss. And if

material was designated as confidential, we were required to take appropriate steps to seal or redact such confidential information in submitting any memoranda of law or briefs or other matters.

And so, the material that we got from the insurers, which came in, you know, just days before our briefs were due, were designated as confidential. We honored our obligations under the confidentiality agreement, and that's what led to this motion. We have designated or redacted the material that the insurers designated as confidential and, for that reason, have submitted this motion.

THE COURT: Okay.

MR. LEVERIDGE: And the material that is at issue is largely commercial related information that was provided in response to our discovery requests.

THE COURT: All right. Well, I guess it was arguably within the definition of confidential in the confidentiality agreement that you've referred to and is attached as Exhibit E to Mr. Rubenstein's affidavit in support of the motion, which defines confidential documents and information as any non-public business-related document, information or material.

But based on my review of the unredacted exhibits, I have a real question as to (a) whether much of this, much

of the redactions are, in fact, confidential non-public, and (b) even if they are, whether they fall into the definition of confidential commercial information in 107(b) of the Bankruptcy Code, which the courts have construed, in large measure, as being more narrow than commercial information, although that's the -- I'm sorry -- information that pertains to someone's business, and instead construed it largely as information that if disclosed would put the party who has designated it as covered by 107(b), at a competitive disadvantage.

And here, it's really not explained, and I understand why you haven't explained it. Because you're the plaintiff, you don't really know exactly why the moving insurers have designated this information as confidential, so you have to speculate and you've pretty much just speculated in very general terms.

But I've looked at it and I'm having a very hard time seeing how any of it is information that isn't public since most of the information either identifies lawsuits that have been filed against the insurers in the United States or arbitrations that they've now sought to have confirmed in a lawsuit; or state that they don't have any information responsive to the documents, which really isn't information; or lastly, is information that, at least unless I hear something to the contrary, doesn't seem to me to be

the type of information that would put an insurer at a competitive disadvantage with other insurers.

So maybe I should hear from the insurers that have designated this information as confidential before I simply rule and deny the motion.

MR. LEVERIDGE: Your Honor, this is Rick Leveridge. Certainly, you've captured our situation perfectly. The material was designated as confidential, and we received it on the eve of having to file our briefs. We erred on the side of making sure that we didn't violate the confidentiality agreement under which we got the material.

I know Mr. Wiener is here. I would defer to him in terms of the assertion of the confidentiality.

THE COURT: Okay, that's fine.

MR. WIENER: Thank you, Mr. Leveridge. Can you hear me okay, Your Honor?

THE COURT: Yes, I can. Can you just state your name and who you're representing again?

MR. WIENER: Yes, Your Honor. This is Harris Wiener of Clyde & Co. I'm representing Arch Reinsurance. We are one of the 11 personal jurisdiction insurers mentioned by Mr. Leveridge.

And as Your Honor mentioned, and Mr. Leveridge I think accurately captured, it was a back-and-forth discussion that was conducted on an expedited basis and

pressured by the plaintiffs' knowledge and recitation that their deadline for their opposition to this personal jurisdiction motion was fast approaching.

For that reason, the personal jurisdiction insurers, including Arch, my client, did not seek to contest to a large degree the amount or the categories or the relevance of certain information sought by the plaintiffs, but rather all parties -- and I think Mr. Leveridge would agree -- worked towards a timely and efficient way of reaching an agreement on what categories of documents and information would be produced, in what form, and then quickly worked towards a confidentiality agreement that all parties would agree to. And this back and forth did involve, you know, quite a bit of meet and confers, emails, telephone conferences, and drafting.

For that reason, the personal jurisdiction insurers were in a position of having to disclose information very quickly and documents very quickly because they did not want to be in a position of hindering the plaintiffs, obviously with the deadline approaching for their opposition. And the documents that were produced and the information that was produced was agreed to be produced under the terms of this confidentiality agreement, and that was something the plaintiffs wanted to agree to and were willing to work with from the very beginning.

With respect to the information and the documents that were produced, it's the position of the personal jurisdiction insurers this is not public information, with the exception of certain lists of cases that I think Your Honor mentioned; obviously knowledge of certain core proceedings and publicly filed dockets would not necessarily fall under that. And I believe that the plaintiffs did a good job of redacting what is confidential and not redacting or withholding from public view information that is confidential for businesses purposes.

Included in some of the information -- and obviously, we're on a public call here -- but is information as to the business operations, the details in the aggregate of contracts written by the personal jurisdiction insurers, and that is some of the information that is confidential and would put the personal jurisdiction insurers in a competitive disadvantage as to areas of --

THE COURT: How would it do so? That seemed to me to be the only possible type of information that's redacted here that, you know, conceivably could, but I had a hard time seeing how it would, i.e., how much you've underwritten in a, you know, particular country.

MR. WIENER: Yes, Your Honor. It's a combination of underwritten and policy limits as well; it's both sides of things. And obviously, when an insurer is both competing

with business with other foreign insurers in Bermuda, speaking as counsel to Arch Reinsurance which is a Bermuda insurer, they're in a position often of having to negotiate against parties that would not necessarily have disclosed this information because there are many insurers in Bermuda that are not a party to this proceeding, of course, and therefore, would be able to know some of the aggregate information and some of the financial information that is not public.

THE COURT: But how does that -- but again, how -- I still -- if insurer X in Bermuda knows that Arch has underwritten X policies in the United States, how does that affect any negotiation with either a prospective customer or another insurer?

MR. WIENER: The knowledge of the amounts of premiums and the amounts of limits issued, as compared to other potential business or existing business, is relevant, Your Honor, and it does necessarily cast insurers in different lights in terms of their potential size, potential ability to serve clients -- excuse me -- serve insureds and issue policies. And this is the type -- for that reason, this is the type of information that is not generally considered public information; it is confidential business information.

And the personal jurisdiction insurers believe the

plaintiffs in their motion to seal specified that the sealing order should be issued as justice requires, and it does not require a heightened standard that some other -- you know, under some other circumstances would need to be met, such that a party doesn't have to necessarily show good cause; it just has to show that there is a potential confidential business information that doesn't necessarily have to rise to the level of a trade secret. And for that reason --

THE COURT: You're moving on to a legal argument which I disagree with and you haven't really answered my factual question. I'm assuming -- maybe I'm wrong -- that someone enters into an insurance contract with an insurer will ask them whether they have experience and also whether they have the resources to actually pay if they have -- you know, if called upon to do so. And these are regulated businesses, right?

MR. WIENER: Of course, that's true.

THE COURT: So they're also regulating by people who confirm what they have to pay, available to pay. And I just -- I don't see what underwriting a particular type of insurance for a particular period puts you at a commercial disadvantage, and again, that's the standard.

MR. WIENER: And I apologize. I was not trying to say, Your Honor, that any of the insurers would be unable to

meet their obligations under a contract. Rather, if a broker in Bermuda -- and obviously, brokers in Bermuda would potentially be aware of this if it were not to be sealed -- is aware of the certain amount of premiums or the certain amount of limits issued by certain insurers for certain types of risks, there's a good chance that brokers will -- that could hurt an insurer's attempt to either maintain a foothold in a business, break into a business, write new business because it would show their current limits separate and apart from their ability to actually execute the contract.

And that's exactly what we're trying to maintain, is that the insurers should be placed in --

THE COURT: How does it show their current limits if you just show the amount that they've underwritten for U.S.-based insureds and for the 2020 fiscal year and the 2020 year, the premium from U.S.-based insureds? How does that -- I don't see how that shows, other than just what they've paid out at that time, you know, not limits on what they can do in the future.

MR. WIENER: Yes. But by definition, obviously, the past information could be used to project into the future because it is just from last year, as you said, 2020.

THE COURT: But it doesn't even show what they have as an ability to issue in the future. It just says

this is what we've done in 2020.

MR. WIENER: Yes. And our exact point is that an insured should be able to rely upon and take and credit an insurer's statement that they have the ability to issue and an insured's desire to enter into a contract within an insured through a broker in Bermuda without a broker saying to an insured or an insured looking at this non-public information about what type of business this insurer has done in the past and whether this type of insurer is particularly large or small in this market, whether this type of insurer is competitive and issues 10 percent of the limits of the insurers or 100 percent of the limits -- excuse me -- of their competitors or 100 percent or 200 percent.

And it would, in fact, put them in a peered category or show them -- put them at a competitive disadvantage as compared to those other insurers who did not have to disclose this information and for whom this information is not public.

THE COURT: Okay. Well, of course, I don't have any evidence on any of that. But I think I've heard enough, unless someone else wants to speak for their client who's an insurer.

MR. WIENER: I would only ask one other thing, Your Honor, if I could just have the Court's indulgence, is

that because the insurers, the personal jurisdiction insurers do not oppose this motion to seal, there was no opposition or no supplemental material put in. If Your Honor is not inclined to grant the motion to seal at this hearing, we would ask that the personal jurisdiction insurers be permitted to submit supplemental briefing in order to present their position in support of the motion to seal.

THE COURT: When is the hearing on the motion to dismiss?

MR. HUEBNER: June 21st, Your Honor.

MR. WIENER: June 21st, yes, Your Honor.

THE COURT: I'm sorry, June 21st?

MR. WIENER: Yes, Your Honor.

THE COURT: All right. I guess I don't have a problem with that, although I do have a problem. I don't think I need briefing; what I need is evidence.

I can tell you though that with the exception of the paragraphs in some of the exhibits that refer to either premium generated or limits of policies issued, I don't see anything that even remotely comes into play under 107(b). The references are to litigations or statements that there are no documents that are responsive to the request, and that's just not going to cut it.

So I think the parties should focus on the point

that you and I have been going over for the last few minutes as a factual matter as to how that might put an insurer at a competitive disadvantage. And, of course, if there's something else like that in the materials and I just missed it, you can certainly bring that up. But other than that, I just don't see a basis with regard to the other redactions for granting this motion under any circumstances.

So it's June 21st, you say, so you can respond by June 14th. And what we'll really be focusing on is, you know, this will be an exhibit at the trial and what can be discussed at the trial, so I'll give you my ruling before the -- at the trial, well, it is a trial.

MR. CALHOUN: Your Honor, may I be heard briefly? This is George Calhoun for Allied World.

THE COURT: Okay.

MR. CALHOUN: I just wanted to make two quick points in response to your questions, and I appreciate the opportunity. For our client, the only things that we designated as confidential were the premium and limit information. We didn't designate any cases or anything like that as confidential. I think the -- on that point, if anyone else has something that says they can, but that information is confidential, and it does impact our business.

Brokers with access to that information could know

that someone might be anxious to get more business in an area because their premium is lower or that they already have a lot and that might be closer to their underwriting limits. So, I mean, it's a piece of a puzzle, but it's an important piece and it very much could impact the businesses, so I ask you to take that into account.

The other thing I wanted to add, and I think you were kind of getting there when you were talking about the hearing date, is that the arbitration insurers are a little bit of a -- excuse me -- personal jurisdiction insurers are in a little bit of a bind here in that one of the issues that we had was, and because we maintain that the personal jurisdiction -- what we're calling the personal jurisdiction insurers are not subject to the Court's jurisdiction.

That, you know, we couldn't come in and file a motion to seal these materials ourselves because we maintain that we're not subject to the Court's jurisdiction and the confidentiality agreement that we negotiation at great length with the plaintiffs and we appreciate their efforts on that, preserve the disputes about whether something is confidential for essentially a third party to resolve until this Court's made its decision on whether it has personal jurisdiction or if it moves them to arbitration and it might never need to make that decision.

And I would suggest just as a practical matter, it

makes sense to carry this, you know, accept the materials under seal for the 30 days until the Court has an opportunity to hear the personal jurisdiction issues. And if it concludes that it has personal jurisdiction, it can then dispose of it in the ordinary course or not; but rather than making that ruling now, waiting until you've decided the personal jurisdiction issues that might eliminate some of the trickier aspects of this.

THE COURT: Okay. Well, why don't you discuss that with your allies, your allied counsel, as well as with the plaintiffs' counsel; that may be a reasonable solution here.

MR. WIENER: Your Honor, speaking for the plaintiffs, we'll be happy to do that. As long as you can read the material, that's what's important to us for purposes of the hearing on June 21st.

THE COURT: I have to say as an aside, I think as far as the public interest in this information is concerned, how much a particular insurer has underwritten with a particular type of insurance in a U.S. market is, you know, maybe the type of thing that "Insurance News" might want to public, but other than that, I can't imagine (sound drops) particular interesting, so that may be a reasonable solution here.

Okay. But I'll give you that date anyway if you

can't reach an agreement on that and you want to have a ruling before the hearing on the motions to dismiss, which again is June 14th.

MR. WIENER: Thank you, Your Honor.

MR. CALHOUN: Thank you, Your Honor.

THE COURT: Okay. If you want to resolve it, just, you know, file a letter on the docket saying that the parties all agree to defer this issue until the Court's ruling on the motion to dismiss.

MR. WIENER: Thank you, Your Honor.

THE COURT: Okay, very well. All right. I think that concludes this morning's agenda, and hearing no one else to the contrary, I will ring off at this point. Thanks everyone.

(Whereupon these proceedings were concluded at 11:44 AM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: May 24, 2021